

### **REMARKS**

The within Amendment is being filed in response to a Notice of Non-Compliant Amendment mailed on May 3, 2007 (the "Notice"). That Notice indicated that response to the Notice of Non-Compliant Amendment filed on April 30, 2007, was not signed in accordance with 37 C.F.R 1.4. The present response corrects this earlier informality.

Claims 1 - 221 are pending in the application. Claim 5 has been cancelled. Claims 136 - 221 are cancelled as they were drawn to non-elected subject matter. Claims 1, 29 and 34, 70 and 118 have been amended. No new matter has been added. Support for the addition of "a microtiter plate" can be found throughout the specification, for example on page 43.

#### **Claim Objections**

The Examiner has indicated that claims 8, 9, 19, 38, 42, 44, 45, 47 – 49, 52, 57, 58, 65 – 69, 72, 73, 79 – 84, 86, 87 90 – 94, 96, 104 – 106, 108 – 113, 116 – 118 and 124 – 135 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and intervening claims. Applicants have amended the base claims to overcome the rejections and respectfully request that the claim objections be withdrawn.

#### **Claim Rejections Non-statutory double patenting**

The Examiner has rejected claims 1 – 3, 6, 7, 10 – 17 and 20 – 28 on the grounds of non-statutory obviousness type double patenting as being unpatentable over claim 1 of USPN 7,109,034 (the '034 patent). The Examiner argues "although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are generic to all that is encompassed in the patented claims (Office Action, p.3)." Applicants will file under separate cover a terminal disclaimer obviating the rejection. Accordingly, Applicants request withdrawal of the rejection and allowance of the claims.

**Claim Rejections- 35 U.S.C. § 102(b)**

Claims 1 – 4, 10, 12 – 14, 16 – 18, 22, 29 – 31, 35 – 37, 39, 40, 54 – 56, 60 – 62, 64, 70, 71, 74 – 78, 85, 88, 89, 95, 97 – 103, 107, 114, 115, 119 - 123 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Holmes et al. (USPN 3,867,201; “the ‘201 reference”).

The Examiner alleges that the ‘201 reference “teaches a syringe with a metal syringe needle which, when the plunger is pressed, is filled with and conducts an electrolytic fluid. The target to which this fluid is delivered, which comprises electrolytes as the agent, is the battery. The bevel at the end of the needle represents a tapered region (Office Action, p.5).” Applicants respectfully traverse the rejection.

Nowhere does the ‘201 reference teach or suggest a tip electrode or an electrode plate as claimed. The syringe needle and bulb shown in the ‘201 reference as a filling device would in no way be considered an electrode tip or an electrode plate as presently claimed. There is no teaching or suggestion that the syringe filled with electrolyte solution could act as an electrode tip or plate as claimed. In fact, the battery of the ‘201 reference has a cathode and anode electrode elements 18 and 20 explicitly called out. See column 2, lines 11 – 33. It is not clear at all from the text or drawings of the ‘201 reference that the needle tip could be electrified with the construction of the battery. There is also no teaching or suggestion of a “coupling to a voltage or current generator.” One of skill in the art would not take a syringe filled with electrolyte fluid meant for filling a battery and couple it to a voltage generator.

Thus, the ‘201 reference fails to teach all the elements of the invention as claimed, and accordingly Applicants request withdrawal of the rejection and allowance of the claims.

Claims 29 – 37, 39 – 41, 43, 46, 50, 51, 53, 55, 56, 59, 60, and 62 - 64 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Kornstein et al. (WO 95/23211; “the ‘211 reference”).

The Examiner alleges that the ‘211 reference “teaches a device having an electrode plate which has a two-dimensional array of tube-like non-planar extensions which extend from one surface, which thus forms lumens, which lumens permit the

passage of tip electrodes and which hold and align them in an array, permitting vertical movement and withdrawal from the target (Office Action, p.7).” Applicants respectfully traverse the rejection.

The teachings of the ‘211 reference do not anticipate the claimed invention. The ‘211 reference fails to teach all the elements of the invention as claimed, in particular it does not teach a “tip electrode comprises a housing defining a lumen for receiving an electrically conductive medium and an electrically conducting surface for coupling to a voltage or current generator”. Accordingly, Applicants request withdrawal of the rejection and allowance of the claims.

**Claim Rejections- 35 U.S.C. § 112, second paragraph**

Claims 34 and 41 have been rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Applicants have amended the claims accordingly and request withdrawal of the rejection and allowance of the claims.

Early and favorable consideration of the pending application is requested.

**CONCLUSION**

In light of the above remarks, Applicants respectfully request early consideration and allowance of the subject application. Should the Examiner wish to discuss any of the amendments and/or remarks made herein, the undersigned attorney would appreciate the opportunity to do so.

The Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment to Deposit Account No. 04-1105.

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Respectfully submitted,

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